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JAMES DAL BON
CA BAR #157942
LAW OFFICES OF JAMES DAL BON
28 NORTH 1ST SUITE 210
SAN JOSE, CA 95113
TEL (408)297-4729
FAX (408)297-4728

E-FILING

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2008 MAR 27 P 2:51

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

ATTORNEY FOR PLAINTIFFS

ADR

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

008 01675

HRL

JESUS MARTINEZ MENDOZA, JAVIER

CABRERA, AURELIANO FLORES

Plaintiffs,

vs.

JOHN W VOJTECH, CBC FRAMING, INC.,

A CALIFORNIA CORPORATION AND

DOES 1-10

Defendants

Case No.

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL:

- 1) Violation of California Labor Code Section 510;
- 2) Violations of the Federal Fair Labor Standards Act;
- 3) Violation of California Business and Professions Code Section 17200; and
- 4) Violation of California Labor Code Section 201; and
- 5) Violation of California Labor Code Section 226.

NATURE OF CLAIM

This is an action on behalf of JESUS MARTINEZ MENDOZA, JAVIER CABRERA, AURELIANO FLORES who have been employed on an hourly basis by JOHN W VOJTECH dba CBC FRAMING, INC., AND DOES 1-10 at various periods two years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes. Plaintiffs seeks compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), waiting time penalties under California Labor

1 Code § 203, damages for inadequate pay statements under California Labor Code Section 226,
2 and attorney's fees, costs, pre judgment interest pursuant to California Labor Code § 1194(a) and
3 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices Act under California
4 Business and Professions Code § 17203.

5 **PARTIES**

- 6 1. At all times relevant herein, Plaintiff Jesus Martinez Mendoza is an individual resident of
7 Brentwood, California.
- 8 2. At all times relevant herein, Plaintiff Javier Cabrera is an individual resident of
9 Brentwood, California.
- 10 3. At all times relevant herein, Plaintiff Aureliano De Ave Flores is an individual resident of
11 Brentwood, California.
- 12 4. At all times relevant herein, Defendant CBC Framing Inc., is a California Corporation
13 headquartered in Canoga Park.
- 14 5. At all times relevant herein, Defendant, John W Vojtech is a managing agent of
15 Defendant CBC Framing Inc., in Canoga Park, California, with control over the Plaintiffs
16 work conditions and pay.
- 17 6. Individual Defendants DOES 1-10, at all times relevant herein, are, according to
18 information and belief, owners, managers, directors, associates, related to, or employees
19 of Defendant, John W Vojtech is a managing agent doing business as CBC Framing Inc.,
20 having control over the Plaintiffs' work condition and work situation.

21 **VENUE**

- 22 7. Venue is based upon the fact the majority of unpaid work performed by the Plaintiffs
23 that is the subject of this complaint occurred in San Ramon, Contra Costa County,
24 California.

25 **GENERAL ALLEGATIONS**

- 1 8. At all times relevant herein, Plaintiffs were employees of defendants JOHN W
2 VOJTECH dba CBC FRAMING, INC., Plaintiffs were according to information and
3 belief, employees of Defendants acting in the normal course and scope of their
4 employment duties with Defendants as framers.
- 5 9. During the course of Plaintiffs' employment with Defendants, Plaintiffs regularly worked
6 in excess of 8 hours per day and more than 40 hours per week.
- 7 10. Plaintiffs were paid on an hourly basis.
- 8 11. Plaintiffs did not perform "exempt" duties in his position as construction workers with
9 Defendants and thus were not subject to any exemption under the Fair Labor Standards
10 Act, 29 CFR 541.112, 541.209 and 541.209. The Plaintiffs were not even marginally
11 responsible for management or administrative functions, and his primary job did not
12 require him to exercise independent discretion and judgment or regularly require
13 invention or imagination in a recognized field of artistic endeavor more than fifty percent
14 of his working time.
- 15 12. At no time during the Plaintiff's employment did Plaintiffs maintain any professional
16 license with the state or practice any recognized profession, nor did Plaintiffs exclusively
17 manage any division of CBC FRAMING, INC., where he customarily and regularly
18 exercised discretionary powers or perform services of management. Plaintiffs did not
19 directly supervise any employees nor did he participate in the development of general
20 administrative policies of CBC FRAMING, INC.

21 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

22 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

- 23 13. Plaintiffs re-allege and incorporate paragraphs 1-12 as if fully stated herein.
- 24 14. California Labor Code Section 501, applicable at all times relevant herein to Plaintiffs'
- 25 employment by Defendants, provides that all employees are entitled to payment at the

rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and double time for hours in excess of 12 in one day.

15. During the course of employment with Defendants, Plaintiffs regularly worked in excess of 8 hours a day and 40 hours per week, however Defendants knowingly and willingly failed to pay Plaintiffs overtime wages as required by law.

16. California Labor Code Section 1194 provides that it is unlawful for employers not to make the required overtime payments identified in the preceding paragraph and that employees not paid such payments can recover any monies owed by civil action.

17. Defendants therefore owe Plaintiffs overtime wages not properly paid to Plaintiffs in an amount to be determined at trial.

18. Defendants have failed and refused and continue to fail and refuse to pay Plaintiffs the amount owed.

19. Defendants' failure to pay Plaintiffs the required sum violates the provisions of Labor Code Sections 510 and 1194 and is therefore unlawful.

20. Pursuant to Labor Code Section 1194(a), Plaintiffs requests that the court award Plaintiffs reasonable attorney's fees and costs incurred by him in this action.

COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT

FAILURE TO PROPERLY PAY OVERTIME WAGES

21. Plaintiffs re-allege and incorporate paragraphs 1-20 as if fully stated herein.

22. At all relevant times herein, Plaintiffs' employment were subject to the provisions of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and Plaintiffs were individual employees covered by virtue of Plaintiffs' direct engagement in interstate commerce.

23. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work performed in excess of forty hours per week, unless specifically exempted by the law.

1 24. Although Plaintiffs were not so exempt during employment with Defendants, Defendants
2 knowingly caused and permitted Plaintiffs to regularly work in excess of forty hours per
3 week without paying Plaintiffs one and one half of Plaintiffs' regular rate of pay.

4 25. By not paying overtime wages in compliance with the FLSA, defendants violated
5 Plaintiffs' rights under the FLSA.

6 26. As a direct and proximate result of defendants' failure to pay proper wages under the
7 FLSA, Plaintiffs incurred general damages in the form of lost overtime wages.

8 27. Defendants intentionally, with reckless disregard for their responsibilities under the
9 FLSA, and without good cause, failed to pay Plaintiffs proper wages, and thus defendants
10 are liable to Plaintiffs for liquidated damages in an amount equal to lost overtime wages,
11 pursuant to 29 U.S.C. § 216(b) of the FLSA.

12 28. Defendants therefore owe Plaintiffs overtime not properly paid to Plaintiffs, in an amount
13 to be determined at trial.

14 29. Plaintiffs were required to retain legal assistance in order to bring this action and, as such,
15 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the
16 FLSA.

17 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201**

18 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

19 30. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-29 as if fully stated
20 herein.

21 31. At the time Plaintiffs' employment with Defendants were terminated, defendant's owed
22 Plaintiffs certain unpaid overtime wages in amounts previously alleged.

23 32. Failure to pay wages owed at an employee's termination as required by Labor Code §201
24 subjects the employer the payment of a penalty equaling up to 30 days wages, as
25 provided for in Labor Code § 203.

1 33. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
2 pay the amount due, thus making defendants liable to Plaintiffs for penalties equal to
3 thirty (30) days wages, in an amount to be determined at trial.

4 34. Pursuant to Labor Code Section 218.5, Plaintiffs requests that the court award Plaintiffs
5 reasonable attorney's fees and costs incurred in this action.

6 35. Pursuant to Labor Code Section 218.6, Plaintiffs requests that the court award interest on
7 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),
8 accruing from the date the wages were due and payable.

9 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**

10 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

11 36. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-35 as if fully stated
12 herein.

13 37. At all times relevant herein, Plaintiffs' employment with Defendants were subject to the
14 California Labor Code and applicable Wage Orders promulgated by the California
15 Industrial Welfare Commission, which required all employees to be paid overtime for
16 work performed in excess of forty hours per week or eight hours per day, unless
17 specifically exempted by law.

18 38. At all times relevant herein, as the employer of Plaintiffs, defendants were subject to the
19 California Unfair Trade Practices Act (California Business and Professions Code §
20 §17000 et seq.), but failed to pay the Plaintiffs overtime pay as required by applicable
21 California Labor Code and applicable Wage Orders.

22 39. During the period Plaintiffs were employed with Defendants, Defendants failed to pay
23 Plaintiffs legally required overtime pay to which he were legally entitled, with defendants
24 keeping to themselves the amount which should have been paid to Plaintiffs.
25

1 40. In doing so, defendants violated California Unfair Trade Practices Act, Business and
2 Professions Code §17200, et seq. by committing acts prohibited by applicable California
3 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a
4 competitive advantage over other employers and businesses with whom defendants were
5 in competition and who were in compliance with the law.

6 41. As a direct and proximate result of defendants' violations and failure to pay the required
7 overtime pay, the Plaintiffs' rights under the law were violated and the Plaintiffs incurred
8 general damages in the form of unpaid wages in an amount to be determined at trial.

9 42. Defendants had been aware of the existence and requirements of the Unfair Trade
10 Practices Act and the requirements of State and Federal wage and hour laws, but
11 willfully, knowingly, and intentionally failed to pay Plaintiffs overtime pay due.

12 43. Plaintiffs, having been illegally deprived of the overtime pay to which he were legally
13 entitled, herein seeks restitution of such wages pursuant to the Business and Professions
14 Code §17203 in an amount to be determined at trial.

15 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

16 **INADEQUATE PAY STATEMENTS**

17 44. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-43 as if fully stated
18 herein.

19 45. California Labor Code Section 226 provides that all employers shall provide to
20 employees accurate and complete wage statements including, but not to limited to, an
21 accurate and current statement of all rates paid for all regular and overtime hours worked
22 during the pay-period, a complete and itemized statement of deductions, net wages
23 earned, the dates fir which payment is being made, any and all applicable piece rates, and
24 the current address ad name of the employer.
25

1 46. California Labor Code Section 226 further provides that any employee suffering injury
2 due to a willful violation of the aforementioned obligations may collect the greater of
3 either actual damages or 50\$ for the first inadequate pay statement and 100\$ for each
4 inadequate statement thereafter.

5 47. During the course of Plaintiffs' employment, defendants consistently failed to provide
6 Plaintiffs with adequate pay statements as required by California Labor Code §226.

7 48. Defendants failed to provide such adequate statements willingly and with full knowledge
8 of their obligations under Section 226.

9 49. Defendants' failure to provide such adequate statements has caused injury to the
10 Plaintiffs.

11 50. Plaintiffs are therefore legally entitled to recover actual damages caused by defendants'
12 failure to provide proper records, in an amount to be determined at trial.

13 51. Plaintiffs has incurred costs and fees in bringing this action and seeks to recover such
14 costs under California Labor Code §226.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiffs prays for the following relief:

17 52. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an
18 amount to be determined;

19 53. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be
20 determined at trial;

21 54. For restitution of unpaid overtime pay pursuant to California Business and Professions
22 Code §17203 in an amount to be determined at trial;

23 55. For waiting time penalty damages of thirty days wages to Plaintiffs, pursuant to
24 California Labor Code § 203 in an amount to be determined at trial;

1 56. Damages and penalties for inadequate pay statements pursuant to California Labor Code
2 Section 226 in an amount to be determined at trial;


3 57. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
4 salaries pursuant to California Labor Code §1194(a);

5 58. Plaintiffs asks the court to award reasonable attorney's fees pursuant to California Labor
6 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

7 59. For costs of suit herein; and

8 60. For such other and further relief as the Court may deem appropriate.

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10 March 26, 2008
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JAMES DAL BON
LAW OFFICES OF JAMES
DAL BON
28 NORTH 1ST STREET
SUITE 210,
SAN JOSE, CA 95113

JS 44 - No. CALIF (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

JESUS MARTINEZ MENDOZA, JAVIER GERRERA,
AURELIANO FLORES

DEFENDANTS

JOHN W VOJTECH dba CBC FRAMING, INC., AND DOES
1-10

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of James Dal Bon
28 North 1st Street Suite 210, San Jose, CA 95113
Tel (408)297-4729

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For diversity cases only)
- | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|
| PTF | DEF | | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Incorporated or Principal Place of Business In This State | | |
| | | Incorporated and Principal Place of Business In Another State | | |
| | | Foreign Nation | | |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 480 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 831 HIA (1395ff) <input type="checkbox"/> 832 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 29 U.S.C. 209, et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 250,000.00

☐ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/28/08